

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH**



April 19, 2013

Our Reference: DMH/SEH/KV/EH/pas
Your Reference: Criminal Case Numbers

Michael Davis (#926,431)
2012 CF3 7286; 2012 CF3 7288
2012 CF1 8036; PDID#: 601-024

The Clerk
Criminal Division
Superior Court
of the District of Columbia
500 Indiana Avenue, NW, Room 4110
Washington, D.C. 20001

Dear Sir:

We wish to call to your attention the case of Michael Davis, who was admitted to Saint Elizabeths Hospital by Court order on May 11, 2012 under the provisions of Title 24, Section 531.03 of the D.C. Code for mental examination, with report due on or before July 13, 2012, with charges of Assault With Intent to Kill While Armed (two counts) and Murder One pending.

Reference is made to our most recent letter to the Court dated December 4, 2012, in which we reported that Mr. Davis was competent to proceed with his case. Subsequently, we received notice that the case was continued until April 22, 2013. Considering that competency to stand trial is based on an individual's current understanding of the adjudicative process, an updated evaluation for competency to stand trial was recently conducted.

On April, 10, 2013, Drs. Erik Hansen and Kristine Vindua, Licensed Clinical Psychologists, re-evaluated Mr. Davis for competency to stand trial. On April 18, 2013, Mr. Davis was assessed for any changes in his psychiatric presentation and trial competence by Dr. Nicole Johnson, Forensic Psychiatrist. Drs. Hansen and Vindua were also present for this evaluation. In the intervening time, there were no changes in Mr. Davis' psychiatric presentation and no inconsistent or conflicting information was given as compared with the April 10, 2013 evaluation. Mr. Davis was made aware of the non-confidential nature of the evaluation and informed that a letter detailing the assessment would be generated for the Court, and that the judge and all attorneys involved in his case would have access to the letter. He agreed to proceed with the evaluation.

Throughout the interviews Mr. Davis appeared comfortable and free of any notable psychological distress. Mr. Davis did not exhibit any overt signs or symptoms of a psychotic or

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mood disorder, such as preoccupation with internal stimuli and mood lability. However, similar to previous evaluations, Mr. Davis' affect (expressed emotion) was generally flat and his posture was rigid. Similar to previous evaluations and consistent with documented observations, Mr. Davis maintained poor eye contact as he kept his eyes in a semi-closed position throughout the evaluation. At one point during the evaluation, Mr. Davis became tearful. When asked, he claimed that his "eyes feel like burning." Compared to his previous competency evaluation, his speech was clearer and more easily heard. He required less prompting and appeared less guarded when discussing topics related to trial competence. His responses were goal-directed, and he was able to maintain focus throughout the duration of the evaluations (the first of which lasted ninety minutes, the second lasted approximately twenty minutes). Since his last evaluation, Mr. Davis showed improvement in his overall presentation and performance on trial competence. He demonstrated ability to process, retain, and accurately apply information given to him.

Mr. Davis demonstrated a sufficient factual understanding concerning his present charges as well as the general criminal adjudicative process. Mr. Davis identified his charges as, "Assault to kill while armed and Murder," which he classified as felony charges. He indicated that he has two charges of "assaults" and one charge of "murder," pending. He was reminded of the official name of his current charges and his understanding of each charge was assessed. Regarding his Assault with Intent to Kill While Armed charge, he stated the charge meant, "Attempt to kill them," and that "while armed" meant a person was "armed with a weapon." He identified a "hammer" as the weapon identified in the police report. Regarding his Murder charge, he stated, "Somebody was killed," and in his case allegedly with "a deadly weapon, a hammer." Mr. Davis' description of the alleged offense was logical and oriented. He identified the location and time of his arrest "at night, in D.C. Petworth area" and individuals present, "a couple officers, four to five." Mr. Davis knew the difference between misdemeanor and felony charges and was able to outline the minimum and maximum sentence generally associated with each category of offense.

Mr. Davis correctly described the roles of major courtroom personnel including the judge, jury, defense attorney, prosecutor, defendant, and witness. Mr. Davis indicated that during a bench trial, the judge determines guilt or innocence, but that during a jury trial, the jury decides. He also understood that the judge imposes the sentence if a defendant is convicted of a crime, keeps "order in the court," and recognized that the judge is supposed to be neutral and impartial stating that the judge is "not on anyone's side." He knew that the jury's role is to evaluate the trial, listen to evidence and determine if a defendant is guilty or innocent. He was aware that all members of the jury must unanimously agree before a verdict is rendered and that there are twelve members in the jury. He demonstrated understanding of the concept of a mistrial and its implications. Specifically, he reported that during a mistrial the charges can be dropped and the defendant would be "free to go," or the prosecutor can decide to retry the case in which, "go back to the case, do it (referencing a trial) again," with a different jury. Mr. Davis stated that his case would likely be retried if it was thrown out because it's a "most serious case." When asked what he meant, he stated "deadly weapon...weapons and attempt to kill." He also acknowledged that someone dying is a "most serious case." He understood the defense attorney is the "attorney on your side, want you to be found Not Guilty." He stated the prosecutor "wants you found Guilty, is against you." He described the role of the defendant as "...to understand what's going on, work with defense, tell the truth, always tell the truth, tell the story, tell what happened, be honest." Mr. Davis reported a witness is "somebody who testifies" and "gives their description of what happened, what they saw." When asked if anyone (e.g.,

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someone from New York who was not there at the time of the alleged offense) can be a witness, he responded, "No, did not see the case."

Mr. Davis demonstrated an accurate appraisal of the available pleas including Guilty, Not Guilty, and Not Guilty By Reason of Insanity (NGBRI). He demonstrated an appreciation of the possible penalties and potential consequences relative to the above plea options. He indicated if a defendant is found Guilty, the judge imposes a sentence. He was cognizant of the rights forfeited by taking a Guilty plea, including rights to a trial and appeal. Dr. Hansen provided some education regarding the appellate process after which Mr. Davis demonstrated he understood a case can be re-examined by a second Court. Mr. Davis indicated that after entering a plea of Not Guilty a trial ensues. He correctly explained what a trial entails, including a hearing and the use of witnesses and other sources of evidence to show guilt or innocence. He demonstrated an adequate understanding of the plea of NGBRI stating, "You did the crime, but you weren't in the right state of mind when the crime was committed." He understood that at the time someone was "mentally ill" and that they did not know that what they did was right or wrong. Mr. Davis understood the implications of pleading NGBRI such as participating in a *Bolton* hearing, in which one undergoes further evaluation to "determine if they're dangerous, determine if they're ill." Furthermore, Mr. Davis explained one can be held indefinitely if committed to a hospital following an NGBRI finding and that one would need to be found no longer a "danger to the community, outside, to yourself," to be discharged from the psychiatric hospital. He stated a plea bargain is a "deal for lesser time, charges can go away." He understood that all parties have to be in agreement with the plea bargain and that a Guilty plea must be entered. Mr. Davis was educated about the concept of a plea bargain in that the charges can be reduced but cannot be dropped.

Mr. Davis correctly identified the various types of sentencing options at the judge's disposal, such as "time served, suspended sentence, jail, probation." Mr. Davis correctly described the meaning of probation and the general requirements commonly associated with probation such as that one may have to submit to urine drug screening, participate in treatment, cannot move without permission, and report to a probation officer. He also knew that a violation of probation can result in being sent to jail. With some education he demonstrated an understanding of suspended sentences.

Mr. Davis demonstrated a rational understanding of the legal process pertinent to his case as well as an appreciation for the severity of his charges. Hypothetical situations were presented to Mr. Davis to help assess his appreciation for the severity of his charges. It was explained to Mr. Davis that these are hypothetical situations and are not a guaranteed outcome. For example, Drs. Hansen and Vindua presented the scenario in which Mr. Davis' trial resulted in a hung jury. When asked whether there was a chance that the charges against him would be dropped, he stated, "No" and expressed that the prosecutor would likely retry the case, "because most felony charges are re-tried, because it's a more serious case." When asked what made his case more serious he stated, "In my case, deadly weapon, attempt to kill, somebody died." When asked what society would consider as a more serious crime, stealing a car or his pending charge, he identified his case being more serious because "society thinks somebody dying is more serious." When asked how he felt about being accused of such serious charges, he stated, "Angry." He acknowledged that the degree of anger he would feel if he was accused of "stealing a shirt" would be less. In the hypothetical scenario in which Mr. Davis was found Guilty, he understood that he could be sentenced to jail. He reported that for Murder the sentence could be "life, minimum 20 years." Mr. Davis indicated if he were found Not Guilty then he would be

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"free to go." Mr. Davis demonstrated a rational and realistic appraisal of the potential outcomes in his case depending on the plea entered and verdict rendered.

Furthermore, Mr. Davis demonstrated sufficient ability to cooperate in a rational manner with his attorneys in the preparation of a legal defense. He correctly identified his attorneys as "Ms. Page, Ms. Amanda" and later added, "Ms. Rose." He reported he has communicated with his attorneys several times. He knew his next hearing is regarding trial competency and "what placement, where they'll put me." When asked to clarify what he meant by "placement" he stated, "Hospital, facility, prison." He expressed that "they [attorneys] have been helpful in what's going on" and that he believes his attorneys have his best interest in mind. He demonstrated his ability to cooperate with his attorneys by demonstrating his ability to weigh evidence, his willingness to take his attorneys' advice, his ability to make rational decisions regarding pleas based on the information the attorneys present to him, his ability to recall details of the case, and willingness to be honest with his attorneys. Mr. Davis was able to identify possible witnesses that could testify for the prosecution, including police officers, victims, and people in the neighborhood. He was also able to identify potential evidence that could be used against him and demonstrated his ability to determine various strengths of evidence. For example, he was able to weigh the strength of evidence in hypothetical scenarios, including the presence of a weapon, clothing worn at the time, and the presence or absence of fingerprints and blood evidence. He understood that he has the right to testify in his case, but is not obligated to do so. He expressed that he would rely on his attorneys' advice on whether or not his testimony would be beneficial.

Mr. Davis discussed his intended plea, but demonstrated flexibility in that he would be willing to entertain other pleas depending on the possible outcomes. When Mr. Davis was asked specifically if he would consider a plea of NGBRI if his attorneys felt it was beneficial for him, he replied that he does not believe he has a mental illness and thus it does not apply to him. However, Mr. Davis acknowledged that for someone who had a mental illness and met the criteria for NGBRI, it would be "better to be in the hospital than jail." He indicated the benefit of the NGBRI plea for someone facing a Murder charge would be that he/she may get "lesser time" and "treatment." He stated, "mental hospital is better than jail because they get treatment." To further assess Mr. Davis' decision-making thought process, he was provided another hypothetical scenario: A very dangerous person was charged with two misdemeanor charges, but also met the NGBRI criteria. Mr. Davis was then asked whether the dangerous person should plead Guilty (knowing the most time he/she could be sentenced was two years in jail) or plead NGBRI. Mr. Davis responded, "Take the two years." When asked why, he stated, "Because NGBRI is indefinite." Moreover, Mr. Davis understood that the decisions he makes ultimately impact him. When asked whether he would rather be in the Hospital or in jail, he stated, "Where it's best for me." When asked who could help him determine where that would be, he identified his "lawyers, attorneys, doctors too." He understood that doctors determine mental illness. Mr. Davis did not exhibit paranoia or negative attitudes towards his attorneys or anyone else involved in the legal system. Mr. Davis was knowledgeable of appropriate courtroom decorum and stated that he would act accordingly.

Based upon the aforementioned information, Mr. Davis demonstrated a factual and rational understanding of the court proceedings against him as well as possessing a sufficient present ability to consult with his attorneys with a reasonable degree of rational understanding. Therefore, it is opined that Mr. Davis remains competent to proceed in his case.

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Mr. Davis is diagnosed with Schizophrenia, Undifferentiated Type. He is currently receiving psychiatric medication for the treatment of his mental illness. As mentioned in our previous letter to the Court, in order to maintain his knowledge base regarding competency as well as to receive continued psychiatric treatment to maintain psychiatric stability, continued hospitalization is recommended. However, if Mr. Davis is returned to the jail, it is recommended that he be placed on the mental health unit for continued psychiatric treatment.

Sincerely,

Patrick J. Canavan, Psy.D.
Chief Executive Officer
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By:



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